



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-Ex Tower Corporation

File: B-228012

Date: November 9, 1987

DIGEST

1. In procurement conducted on a brand name or equal basis, an offer of an equal product properly may be rejected where the offer, while containing a blanket statement expressing compliance with the salient characteristics set forth in the solicitation, does not include sufficient documentation allowing the contracting activity to determine whether the product in fact complies with the stated minimum requirements.

2. Protest that agency failed to conduct meaningful discussions is without merit where the contracting activity requested that the protester furnish additional data regarding its proposed product and this request should have apprised the protester of the areas of its proposal found deficient.

DECISION

Tri-Ex Tower Corporation protests the award of a contract to Chu Associates, Inc., under request for proposals (RFP) No. DAAL02-87-R-9071, issued by the Department of the Army. This RFP, issued on a brand name or equal basis, invited offers for a quantity of 157 extendable towers, Tri-Ex Model MRS-419-66-300, or equal, and also set forth six specific salient characteristics, conformance with which was mandatory. Tri-Ex contends that the contracting activity incorrectly found its low-priced offer to be noncompliant with the stated salient characteristics, and that the product offered by the awardee, Chu Associates, did not comply with these minimum requirements. Tri-Ex also alleges that the agency conducted inadequate discussions.

We deny the protest.

Tri-Ex offered both the brand name model (third lowest cost), which it stated would not meet one of the solicitation's salient characteristics, and an alternate, its Model ED-20 (lowest cost), which it stated would meet

all the stated technical requirements, without exception. Chu Associates also offered an equal product, Chu Model BY7PA (second lowest cost), which it similarly stated would comply with all requirements. The contracting activity rejected Tri-Ex's alternate offer of the ED-20 tower for the stated reason that this product's conformance with the listed salient characteristics could not be determined from the drawings, specifications and other materials furnished. The contracting activity did find Chu's offer to be fully compliant with the RFP's requirements, however, and thus selected Chu for award.

Tri-Ex's primary basis of protest is that its Model ED-20 tower, as documented by the drawings and specifications included with its offer, complied with each of the six salient characteristics, as well as all other terms and conditions set forth in the RFP, and that rejection of this low-priced offer thus was improper. Further, to the extent that its proposal was found deficient because certain characteristics could not be ascertained from its offer, Tri-Ex maintains, any such deficiencies were not properly identified by agency personnel during discussions. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610 (1986) (contracting officer shall advise an offeror of deficiencies in its proposal to afford the offeror an opportunity to satisfy the government's requirements).

The solicitation contained the standard brand name or equal clause, Department of Defense Supplement to the FAR, 48 C.F.R. § 252.210-7000 (1987), cautioning offerors "to furnish all descriptive material . . . necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the Request for Proposals. . ." Under this provision, the contracting activity is responsible for evaluating the data supplied by an offeror and ascertaining if it is sufficient to determine the acceptability of the offeror's item. We will not disturb this technical determination by the agency unless it is shown to be unreasonable. Physio Control Corp., B-224491, Oct. 17, 1986, 86-2 C.P.D. ¶ 467.

Our review of Tri-Ex's initial proposal reveals that the descriptive materials furnished to establish the acceptability of its model ED-20 consisted primarily of a single hand-drawn sketch generally showing the design and dimensions of the tower; a list of the tower's specifications, which corresponded to the six salient characteristics set forth in the RFP; and an indication that this tower met or exceeded each of the salient characteristics. In response to an agency request during discussions for more details regarding the tower's materials and design, Tri-Ex included in its best and final offer four additional

drawings showing in greater detail the construction of the model ED-20 tower. The contracting activity found these materials insufficient to determine the proposed tower's compliance with one salient characteristic requiring that the offered product be capable of supporting an antenna weighing 50 pounds and having a sail area of 9.7-square feet, in winds of 25-miles per hour. We think this determination that Tri-Ex had not adequately demonstrated compliance with the requirement was reasonable.

Although Tri-Ex stated in its offer that the model ED-20 tower could accommodate an antenna weighing 75 pounds and has a sail area of 10-square feet in 2-miles per hour winds, Tri-Ex did not furnish any supporting information specifically addressing the salient characteristic pertaining to wind load. The single drawing Tri-Ex included with its initial proposal and the four additional drawings submitted with its best and final offer, while showing the design of the tower in varying degrees of detail, in no way demonstrated--for instance, through mathematical or other technical discussion--how this tower would achieve the required performance level. We conclude that the Army thus reasonably determined that Tri-Ex had failed to furnish adequate data to demonstrate compliance with the wind load requirement, and properly rejected Tri-Ex's offer. See Supreme Automation Corp. et al., B-224168, et al., Jan. 23, 1987, 87-1 C.P.D. ¶ 83.

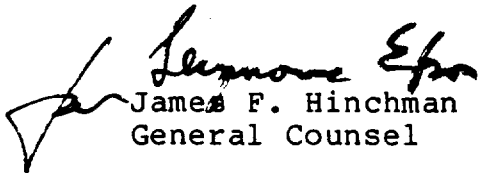
Tri-Ex alleges that discussions were inadequate because the Army failed to identify and provide Tri-Ex an opportunity to correct the informational deficiency. Tri-Ex acknowledges that agency personnel did identify several areas in its proposal requiring clarification, for example that additional details were needed regarding the winch drum assembly and mast materials and design, but states that these individuals never mentioned any need for clarification or greater detail concerning the wind load capabilities of the tower. This basis of protest is without merit.

The record shows that the agency's questions prepared for negotiations with Tri-Ex included the request that Tri-Ex "clarify tower materials and design to show compliance with wind loading requirement." The contracting officer states that this request was made by an Army engineer during telephonic negotiations conducted with Tri-Ex over a 3-day period. This request clearly identified the agency's concerns with Tri-Ex's failure to demonstrate compliance with the wind loading requirement. While Tri-Ex states it was not told of the need for clarification in this area, such self-serving statements that conflict with the agency's report are not sufficient to satisfy the protester's burden

of submitting probative evidence to prove its case. A.J. Fowler Corp., B-224156, Jan. 8, 1987, 87-1 CPD ¶ 33.

Finally, Tri-Ex contends that the product offered by Chu Associates, the awardee, did not comply with a requirement that the tower be installed without guy wires; the first page of the product data bulletin Chu furnished with its offer indicates that the tower it proposed requires guy wires. The record reveals, however, that this tower also could be erected without guy wires. Chu Associates furnished documentation, including detailed drawings of the tower's construction and design, and a statistical analysis of the tower's performance under certain wind conditions, establishing that this tower, when installed without guy wires, would meet the required salient characteristics. Accordingly, we think the agency reasonably determined that the Chu Associates tower satisfied all salient RFP requirements.

The protest is denied.


James F. Hinchman
General Counsel